IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.257 OF 1994

Hukmichand H.Jain, of Bombay
Indian Inhabitant carrying on
business in the name and style
of M/s.Diamond Exports, a sole
Proprietory concern thereof
having his address at 234,
Panchratna, Opera House,
Bombay - 400 004. .. Petitioner

V/s

1. Union of India
   by and through the Joint
   Secretary, Ministry of Law
   Justice & Company Affairs,
   Aayakar Bhawan, Maharshi-
   Karve Road, Bombay 400 020.

2. Joint Director General of
   Foreign Trade, New CGO Building
   New Marine Lines, Bombay 400 020.

3. Director General of Foreign Trade,
   having his office at Udhyog Bhavan,
   New Delhi. .. Respondents

....

Mr.Naresh Thacker i/b. Mr.N.M.Shah for the Petitioner.
Mr.S.M.Shah with Mr.Y.R.Mishra for the Respondents.

CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 01.02.2006.

JUDGMENT: (Per J.P.Devadhar, J.)

1. This petition is filed to challenge the orders dated 4th February, 1992, 29th October, 1992 and 11th June, 1993 (Exhibits I,M,O to the petition), passed by the licensing authorities rejecting the application dated 03.08.1989 made by the Petitioner for issuance of REP Licence against the exports effected in May-June 1989.

2. The only ground for rejecting the application of the petitioner as set out in the order dated 04.02.1992 is that the Petitioner had furnished the Registration-cum-Membership Certificate (RCMC) on 24.01.1992 i.e.after a period of two years from the period of export.

3. It is not in dispute that alongwith the application dated 03.08.1989 the petitioner had forwarded the RCMC Certificate dated 2nd April, 1985 issued by the Jem & Jewellary Export Promotion Council, Bombay valid for four years w.e.f.16th April, 1985. Period of four years from 16.04.1985 would expire on 15.04.1989. However, in the said RCMC Certificate the expiry date mentioned was 15.04.1987 instead of 15.04.1989.

4. As per the prevailing Export-Import policy the Petitioner was entitled to apply for a fresh registration certificate within a period of six months from the date of expiry of the registration certificate. In the present case, the Petitioner had applied for a fresh certificate on 18.07.1989 i.e.within a period of six months from 15.04.1989. In fact the competent authority has issued a fresh certificate on 23rd January, 1992 with retrospective effect from 16th April, 1989 so as to enable the Petitioner to avail the benefit due under the import policy during the relevant period.

5. Mr.Shah, learned Counsel for the Respondents fairly stated that the application has not been rejected on the ground that the RCMC dated 02.04.1985 mentions the expiry date as 15.04.1987 but the application has been rejected on the ground that the valid RCMC Certificate has been furnished on 24.01.1992 which is beyond the period of six months. Acording to Mr.Shah the RCMC Certificate dated 02.04.1985 had expired on 15.04.1989 and even though the petitioner had applied for fresh certificate on 03.08.1989 admittedly the petitinoer had failed to furnish a valid certificate within the stipulated time and therefore the licensing authorities were justified in rejecting the application.

6. In our opinion, the rejection of the application of the Petitioner cannot be sustained because it is an admitted fact that even before making an application for REP Licence on 3rd August, 1989 the Petitioner had applied for a fresh RCMC Certificate on 18.07.1989. Admittedly the appropriate authority had issued a fresh certificate on 23rd January, 1992 with retrospective effect from 16th April, 1989 so that the Petitioner is not deprived of the accrued right on account of the delay on the part of the competent authority in issuing the certificate. The fact that the petitioner had approached the appropriate authority within the prescribed time seeking fresh certificate cannot be ignored by the licensing authorities. Once the appropriate authority has granted the certificate with

retrospective effect the licensing authorities were bound to honour the same. In the present case the petitioner has complied with all the requisite conditions for obtaining the RCMC certificate as well as the REP licence, therefore the application could not be rejected on the ground that the RCMC certificate was submitted belatedly. In this view of the matter, the impugned orders passed by the Adjudicating Authority as well as the Appellate Authorities are quashed and set aside, and the Adjudicating Authority is directed to consider the application of the Petitioner for REP Licence on its own merits and in accordance with law, and dispose of the same as expeditiously as possible, in any event within a period of eight weeks from today. Petition disposed of accordingly, with no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)